

PATENT
Attorney Docket No. 492.408

IN THE UNITED STATES PATENT AND TRADEMARK OFFICE

In re Application of:

SAVICKI, et al.

Serial No.: 10/820,616

Art Unit: 3781

Examiner: Smalley, James N.

Filed: April 8, 2004

For: VENTABLE SPIN LOCK CONTAINER

PETITION TO SUSPEND THE RULES UNDER 37 C.F.R. § 1.183

Mail Stop Petitions
Commissioner for Patents
P.O. Box 1450
Alexandria, VA 22313-1450

Dear Sir:

Pursuant to 37 C.F.R. § 1.183, Petitioner prays that the Commissioner suspend the operation of § 1.135(a) and allow the Examiner to proceed with further examination or allow for the above-referenced patent application. Petitioner respectfully submits that justice requires suspension of § 1.135(a) in the present case.

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Facts in Support of Petition

1. On June 14, 2007, a final Office Action was mailed from the USPTO to the Applicants. A true copy of this final Office Action is included herewith as Exhibit A.
2. On September 12, 2007, a telephonic interview occurred between Examiner Smalley, Supervisory Primary Examiner Stashick and Applicants' representatives, Thomas Feix and Alok Goel to discuss the prior art of record. A copy of the Interview Summary was mailed from the USPTO to the Applicants on September 14, 2007. A copy of the Interview Summary was mailed on September 14, 2007 and is included herewith as Exhibit B.
3. On October 10, 2007, a second telephonic interview occurred between Examiner Smalley, Supervisory Primary Examiner Stashick and Applicants' representatives, Thomas Feix and Alok Goel in which proposed amendments were discussed. After much discussion, an agreement on the claim language to all independent claims was reached by Examiner Smalley, Supervisory Primary Examiner Stashick and Applicants' representatives, Thomas Feix and Alok Goel. A copy of the Interview Summary Record was mailed on October 18, 2007 and is included herewith as Exhibit C. In the Interview Summary, the Examiner states that "Examiner proposed amendments to better define the invention's vertical sealing surfaces such that the proposed amendments (see attached draft claim) will read over the prior art." (Underline added for emphasis)
4. On October 15, 2007, Applicants filed a response to the Final Office Action, thereby amending the independent claims to the proposed claim language as agreed upon in our telephonic interview on October 10, 2007. A copy of Applicants' response is included herewith as Exhibit D. A Request for Continued for Examination ("RCE")

was not filed with the Response to the Final Office Action as Applicants understood that the amendments discussed on the telephone would make the case allowable over the prior art and if there were any issues outstanding, the Examiner would contact Applicants' representatives directly.

5. At the end of December, Examiner Smalley called Applicants' representatives Thomas Feix and Alok Goel to ascertain the status of the case. Applicants' representatives called Examiner Smalley within 24 hours to inform him that a response was filed to the final Office Action on October 15, 2007.
6. On January 17, 2008, the USPTO issued an Advisory Action stating that "the amendments comprise new limitations which were not previously considered and thus will require further search and consideration." A copy of the Advisory Action is included herewith as Exhibit E.
7. On January 29, 2008, Applicants called Examiner Smalley to clarify why an Advisory Action was issued as Applicants' representatives thought an agreement on claim language was reached. Examiner Smalley explained that the Applicants' response was forwarded to him on January 14, 2008, a full 3 month delay after Applicants filed the response. Since the response was forwarded to the Examiner 7 months after the mailing of the Final Office Action, Examiner Smalley indicated that he could not update his search on the prior art (and potentially allow the case) since the case technically went abandoned. Alok Goel confirmed that the case went technically abandoned because of the delay in the response being forwarded to Examiner Smalley. A copy of the Interview Summary Record was mailed on February 8, 2008 and is included herewith as Exhibit F.

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8. On February 8, 2008, a Notice of Abandonment was mailed from the USPTO to the Applicants. A copy of the Notice of Abandonment is included herewith as Exhibit G.

RELIEF SOUGHT

In view of the fact that the Petitioner filed a response to a Final Office Action after a telephonic interview in which an agreement was reached on proposed claim language by the Examiners and Applicant's representatives, and Petitioner did not know or could not have anticipated that United States Patent & Trademark Office would take a full 3 months to forward a response to the Examiner, much less know or could have anticipated that the Examiner would pick up the case 7 months after the mailing of the final Office Action and indicate that a new search is needed but cannot be done since the case is technically abandoned, Petitioner respectfully submits that justice requires that the operation of 37 C.F.R. § 1.135(a) be suspended in this case, and that the USPTO allow the Examiner to update the search of the prior art in light of the amendments made by the Applicants and i) if the Examiner finds no prior art of record, allow the Examiner to issue a Notice of Allowance or ii) if the Examiner finds appropriate prior art, allow the Applicants to file a RCE with the required filing fee and response and waive the Petition to Revive Unintentionally Abandoned application fee. Such relief is respectfully requested.

If the Petition to Suspend the Rules Under 37 C.F.R. § 1.183 is denied, Applicants hereby submit a Petition To Revive Unintentionally Abandoned case along with a RCE with the required filing fee and the response to the final Office Action as filed on October 15, 2007.

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Please charge the required petition fee of \$130.00 set forth in 37 C.F.R. § 1.17(f) to Deposit Account No. 03 2270. The Commissioner is further authorized to charge any additional fees or to credit any overpayment associated with this communication to Deposit Account No. 03 2270. **This petition is submitted in duplicate.**

Respectfully submitted,

Date: March 4, 2008

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